

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWANE DELROY PALMER,

Defendant-Appellant.

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UNPUBLISHED

October 5, 2004

No. 247206

Wayne Circuit Court

LC No. 02-012075

Before: Donofrio, P.J. and White and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right from a nonjury conviction of assault with intent to rob while armed, MCL 750.89, for which he was sentenced to fourteen to thirty years in prison. We affirm.

Defendant's sole claim on appeal is that the evidence was insufficient to sustain the verdict. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of assault with intent to rob while armed are (1) the defendant committed an assault with force and violence, (2) the defendant had the intent to rob or steal, and (3) the defendant was armed. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). "A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). The defendant's intent may be inferred from all the facts and circumstances of a case, *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993), including his words, his conduct, and the manner in which the crime was committed. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

Allen Small testified that defendant demanded fifty cents and then attacked him with a knife and stabbed him. Such evidence, if believed, was sufficient to prove each element of the crime charged beyond a reasonable doubt. While defendant disputes Small's credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's

resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993).

To the extent defendant contends that the trial court erred in rejecting his claim of self-defense, we find no error. Apart from the fact that defendant's testimony did not establish that he acted in response to an assault by Small, *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999), or that the use of force was immediately necessary, *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002), the factfinder "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). Therefore, the trial court did not clearly err in tacitly finding that defendant did not act in self-defense.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Helene N. White  
/s/ Michael J. Talbot